

VZCZCXRO4766  
OO RUEHAG RUEHDF RUEHIK RUEHLZ RUEHROV  
DE RUEHFT #5275/01 3521123  
ZNR UUUUU ZZH  
O 181123Z DEC 07  
FM AMCONSUL FRANKFURT  
TO RUEHC/SECSTATE WASHDC IMMEDIATE 4218  
INFO RHEBAAA/DEPT OF ENERGY WASHDC IMMEDIATE  
RUCNMEM/EU MEMBER STATES IMMEDIATE  
RUCNFRG/FRG COLLECTIVE IMMEDIATE

UNCLAS SECTION 01 OF 02 FRANKFURT 005275

SIPDIS

DEPARTMENT FOR EUR/AGS

SIPDIS

E.O. 12958: N/A

TAGS: [ENRG](#) [SENV](#) [GM](#)

SUBJECT: Hesse Enters Energy Debate

ENTIRE TEXT IS SENSITIVE BUT UNCLASSIFIED. NOT FOR INTERNET  
DISTRIBUTION

REF: Berlin 2034

¶1. SUMMARY: The Hesse state government intends to introduce a bill in the upper chamber of the German federal parliament (Bundesrat) in early 2008 offering an alternative strategy for energy deregulation in Germany. Under the plan, the federal government will be able to force energy suppliers to sell their power plants and other assets in order to create more competition in the industry. The bill offers an alternative approach to both the EU's "unbundling" proposal and the German Federal Economic Ministry's plan to deregulate the energy market. END SUMMARY.

#### Hesse's Energy Initiative

-----

¶2. On December 6, ConGen Frankfurt representatives attended a round-table hosted by the Hesse Economic Ministry on the state's proposal to modify the federal law on anticompetitive practices (GWB). Economic Minister Alois Rhiel (CDU) outlined his proposal, which would give the Federal Antitrust Agency (Bundeskartellamt) the power to force energy companies to sell off a designated amount of their power plants and other assets, but not to specify which assets are to be sold. The proposal contrasts with both the current EU "unbundling" initiative which would force European energy companies to divest themselves of either their transmission networks or power generation assets and German Federal Economic Minister Michael Glos's (CSU) counter-proposal calling for more deregulation and network integration among EU member states (see reftel). Hesse will most likely bring the proposal before the Bundesrat in January 2008.

¶3. Rhiel and a team of legal experts argued that the Hesse proposal is constitutional and unlikely to be challenged successfully in court. Pointing to successful earlier breakups of monopolies like the Deutsche Post, Rhiel said that the state clearly had the law on its side when it fostered more competition for the public good. According to Rhiel, current soaring energy prices in Germany amount to a "regressive tax and a limitation on competition within the German energy market." Other states in Germany have shown an interest in Rhiel's proposal. At the Conference of State Economic Ministers chaired by Rhiel in Darmstadt in November 2007, the ministers concluded that they needed to see if the GWB should be widened to include "an instrument that enables structural changes for the improvement of competition," meaning forced sales.

#### Hesse's Champion of Cheaper Energy

-----

¶4. The German energy market is dominated by four big energy suppliers, E.on, RWE, Vattenfall and EnBW who control 80% of the market and are often accused of setting prices. All four of them have announced price increases of at least 10% in 2008 and the price of energy in Germany has increased 38.5% in the last seven years,

making German consumer energy costs the third highest in Europe. Rhiel has long been known as a champion of the consumer in the energy debate. He gained fame in 2005 and 2006 when he banned increases in energy prices in Hesse. At that time, he said that the state was obligated to protect its citizens from exploitation by an oligarchy. Rhiel also criticized the fact that the federal government gave energy suppliers certificates to emit CO2, instead of selling them.

#### Big Business, Big Election

15. Deputy Chief of the Frankfurt Chamber of Commerce (IHK) Johannes Wagner told Pol Specialist that the private sector is very skeptical of Rhiel's initiative and favors an EU-led solution that lowers energy prices simply by fostering cross-border competition and free trade. Many private companies contend that forced sales are unconstitutional and are wary of state intervention in market structures. Wagner argued that private companies opposed a unilateral privatization or deregulation that would hinder competition with state-owned energy suppliers in France and Italy. Minister Glos has also said Germany needs large, powerful energy suppliers able to compete with European counterparts.

16. Rhiel's proposal comes shortly before the January 27, 2008 Hesse state parliament election, when his job may be on the line. The CDU looks set to lose its outright majority and could conceivably end up out of power. If the CDU stays in power, it will most likely be in a coalition with the FDP, who not only are interested in taking over the state Economic Ministry but have also expressed support for the Federal Economic Ministry's proposals. The Hesse FDP would like to see the state create more incentives to build power plants and more competition by increasing supply, not through forced sales.

17. COMMENT: By submitting his proposal to the Bundesrat, Rhiel will be challenging the approach of his own party at the federal level.

FRANKFURT 00005275 002 OF 002

The Government and German energy companies have strongly opposed the EU's unbundling directive and would be unlikely to support this proposal. The CDU/CSU currently has a majority in the Bundesrat and Rhiel's initiatives have enjoyed the support of other states in the past. Whatever his chances of success, Rhiel has shown that while German politicians may be united in their opposition to the EU's "unbundling" proposal, there is still no consensus on a solution to rising energy prices in Germany. END COMMENT.

18. This cable was coordinated with Embassy Berlin.  
POWELL